

1 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
2 OF PALM BEACH COUNTY, FLORIDA, TO BE ENTITLED "THE
3 PALM BEACH COUNTY PURCHASING ORDINANCE," REPEALING
4 ORDINANCES 85-28 AND 86-38; ESTABLISHING A
5 CENTRALIZED PURCHASING SYSTEM; SETTING FORTH
6 AUTHORITY AND GENERAL PURPOSE; PROVIDING FOR
7 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND
8 REQUIREMENT OF GOOD FAITH; PROVIDING FOR
9 APPLICATION; PROVIDING FOR DEFINITIONS; DESIGNATING
10 DUTIES AND AUTHORITY OF THE DIRECTOR OF PURCHASING;
11 PROVIDING FOR DELEGATION OF AUTHORITY TO
12 SUBORDINATE STAFF AND AUTHORITY OF DEPARTMENTS OF
13 ENGINEERING AND WATER UTILITIES; ESTABLISHING
14 REQUIREMENTS FOR SOURCE SELECTION; PROVIDING FOR
15 COMPETITIVE SEALED BID AND COMPETITIVE PROPOSAL
16 PROCESSES; PROVIDING FOR ALTERNATIVE SOURCE
17 SELECTIONS; PROVIDING FOR PROTESTED SOLICITATIONS
18 AND AWARDS; PROVIDING FOR SUSPENSION AND DEBARMENT;
19 PROVIDING FOR INSPECTIONS AND TESTS; PROVIDING FOR
20 EQUAL OPPORTUNITY/MINORITY BUSINESS; PROHIBITING
21 CONFLICTS OF INTEREST; PROVIDING FOR REPEAL OF LAWS
22 IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING
23 FOR INCLUSION IN THE CODE OF LAWS; PROVIDING FOR
24 EFFECTIVE DATE.

25 WHEREAS, Palm Beach County wishes to provide for the
26 purchase of the highest quality goods and services at the most
27 reasonable cost and for the fair and equitable treatment of
28 persons doing business with the County; and

29 WHEREAS, Palm Beach County enacted Ordinances 85-28 and
30 86-38, providing for a central purchasing system governing the
31 procurement of goods and services for the County; and

32 WHEREAS, the Board of County Commissioners, after review
33 and upon study and recommendation of staff, finds and
34 determines that modifications are necessary in the purchasing
35 system to be reflected in a new Purchasing Ordinance; and

36 WHEREAS, the Board of County Commissioners desires to
37 repeal the current Purchasing Ordinances 85-28 and 86-38 and
38 to enact a new comprehensive ordinance effectuating those
39 modifications.

40 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
41 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

42 I. REPEAL OF PRIOR ORDINANCES

43 Palm Beach County Ordinances 85-28 and 86-38 are hereby
44 repealed in their entirety.

45 II. GENERAL PROVISIONS

46 A. AUTHORITY

47 The provisions of this Ordinance are based upon the

authority granted to the Board of County Commissioners of Palm Beach County, Florida, in Chapter 125, Florida Statutes.

B. SHORT TITLE

The provisions of this Ordinance shall be known and cited as the Palm Beach County Purchasing Ordinance.

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1 D. GENERAL PURPOSE

2 The purpose of this Ordinance is to place the County's
3 purchasing function under a centralized system which will
4 enable the County to:

5 (1) establish policies governing the purchase of
6 goods and services;

7 (2) provide for fair and equitable treatment for
8 all persons who do business with Palm Beach County;

9 (3) encourage and promote equal opportunity for all
10 persons doing business with Palm Beach County;

11 (4) obtain goods and services of satisfactory
12 quality and quantity at reasonable cost for Palm Beach County;
13 and

14 (5) permit the continued development of procurement
15 policies and procedures through the promulgation of Rules and
16 Regulations of Purchasing.

17 E. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

18 The County shall comply with all applicable Federal and
19 state laws.

20 The principles of law and equity, including the Uniform
21 Commercial Code of this State, laws relative to ethics, and
22 laws relative to contract, agency, fraud, misrepresentation,
23 duress, coercion, mistake, or bankruptcy shall supplement the
24 provisions of these rules and regulations.

25 F. REQUIREMENT OF GOOD FAITH

26 The provisions of this Ordinance require all parties
27 involved in the development, performance, or administration of
28 purchasing contracts of the Board of County Commissioners to
29 act in good faith.

30 G. APPLICATION

31 The provisions of this Ordinance shall apply to every
32 purchase by the Board of County Commissioners and the
33 departments which are under the control of the Board of County
34 Commissioners, irrespective of their fund source, including
35 state and federal assistance monies, except as otherwise
36 specified by law. They shall not apply to:

- 1 (1) Agreements between the Board of County
2 Commissioners and nonprofit organizations or
3 other governments including the transfer, sale
4 or exchange of goods and/or services.
- 5 (2) Procurement of dues and memberships in trade
6 or professional organizations; subscriptions
7 for periodicals; advertisements; postage;
8 expert witnesses; abstracts of titles for real
9 property; title insurance for real property;
10 court reporter services; legal services;
11 water, sewer, and electrical utility services;
12 copyrighted materials; patented materials;
13 licensed computer software; and fees and costs
14 of job-related seminars and training.
- 15 (3) Projects which are governed by the provisions
16 of "Consultants' Competitive Negotiations
17 Act", Section 287.055, Florida Statutes.
- 18 (4) Real property.
- 19 (5) Goods and/or services by grant, gift or
20 bequest.
- 21 (6) Goods purchased with petty cash in accordance
22 with established County procedures.

23 H. DEFINITIONS

- 24 (1) Administrator means the County Administrator.
- 25 (2) Agreement means the bargain of the parties in
26 fact as found in their language or by implication from other
27 circumstances including course of dealing, usage of trade, or
28 course of performance. Whether an agreement has legal
29 consequences is determined by the provisions of the Uniform
30 Commercial Code of Florida, if applicable, otherwise, by the
31 law of contracts.
- 32 (3) Bid means a formal price offer by vendor to the
33 buyer to furnish specific goods and/or services in response to
34 an Invitation for Bids, Request for Quotation or a multi-step
35 bidding procedure.
- 36 (4) Board means the Board of County Commissioners
37 of Palm Beach County, Florida.

1 (5) Business means any corporation, partnership,
2 individual, sole proprietorship, joint stock company, joint
3 venture, or any other private legal entity.

4 (6) Capital Improvement Project means any public
5 improvement which the County undertakes including the
6 construction or reconstruction in whole or in part of any
7 building, road, highway, street improvements, plant,
8 structure, or facility necessary in carrying out the functions
9 of the County government.

10 (7) Change Order means a written document executed
11 to direct a vendor or contractor to make changes or additions
12 to a purchase order or contract.

13 (8) Construction means the process, usually
14 requiring the professional services of an architect and/or
15 engineer, of building, altering, repairing, improving, or
16 demolishing any structure or building, or other improvements
17 of any kind to any real property. It does not include any
18 routine maintenance, operation or repair of existing
19 structures, buildings or real property.

20 (9) Contract means (a) a deliberate verbal or
21 written agreement between two or more competent parties to
22 perform or not perform a specific act or acts (b) any type of
23 agreement regardless of what it is called for the procurement
24 or disposal of supplies, services or construction.

25 (10) Contractor means any person having a contract
26 with the Board of County Commissioners.

27 (11) Debarment means the exclusion for cause of a
28 vendor or contractor from bidding and/or doing business with
29 the County.

30 (12) Design-build Firm means a partnership,
31 corporation, or other legal entity which:

- 32 1. Is certified under Section 489.119,
33 Florida Statutes, to engage in contracting
34 through a certified or registered building
35 contractor as the qualifying agent; and
- 36 2. Is certified under Section 471.023,
37 Florida Statutes, to practice engineering;

1 certified under Section 481.219, Florida
2 Statutes, to practice or to offer to practice
3 architecture; or certified under Section
4 481.319, Florida Statutes to practice or to
5 offer to practice landscape architecture.

6 (13) Design-build Contract means a single contract
7 with a design-build firm for the design and construction of a
8 public construction project.

9 (14) Design-criteria Package means concise,
10 performance-oriented drawings or specifications of the public
11 construction project. The purpose of the design criteria
12 package is to furnish sufficient information so as to permit
13 design-build firms to prepare a bid or a response to an
14 agency's request for proposal, or to permit an agency to enter
15 into a negotiated design-build contract. The design criteria
16 package shall specify such performance-based criteria for the
17 public construction project, including, but not limited to,
18 the legal description of the site, survey information
19 concerning the site, interior space requirements, material
20 quality standards, schematic layouts and conceptual design
21 criteria of the project, cost or budget estimates, design and
22 construction schedules, site development requirements,
23 provisions for utilities, storm water retention and disposal,
24 and parking requirements, as may be applicable to the project.

25 (15) Design Criteria Professional means a firm who
26 holds a current certificate of registration under chapter 481
27 to practice architecture or landscape architecture or a firm
28 who holds a current certificate as a registered engineer under
29 Chapter 471, Florida Statutes, to practice engineering and who
30 is employed by or under contract to the agency for the
31 providing of professional architect services, landscape
32 architecture services, or engineering services in connection
33 with the preparation of the design criteria package.

34 (16) Designee means a duly authorized representative
35 of a person holding a superior position.

1 (17) Director of Purchasing means the person holding
2 the position as the head of the Purchasing Department of Palm
3 Beach County.

4 (18) Emergency Procurement means a procurement made
5 in response to a requirement when the delay incident to
6 complying with all governing rules, regulations, and/or
7 procedures would be detrimental to the interests of the
8 County.

9 (19) Employee means an individual of a governmental
10 body of the County government under the control of the Board
11 who is drawing a salary or wages from the Board.

12 (20) Goods means any tangible personal property
13 other than services or real property.

14 (21) Governmental Body means any division,
15 department, separate office, commission, council, board,
16 bureau, committee, institution, legislative body, agency,
17 government corporation, constitutional office, or other
18 establishment or official of the County Government.

19 (22) Invitation for Bids means (a) the solicitation
20 document used for competitive sealed bidding for the purchase
21 of goods and/or services (b) all documents, whether attached
22 or incorporated by reference, utilized for soliciting bids.

23 (23) Item means a product, material or service.

24 (24) Mandatory Bid Amount means the threshold dollar
25 amount established as policy by the Board of County
26 Commissioners at and above which the formal competitive sealed
27 bid process must be used, except as otherwise provided herein.
28 The Mandatory Bid Amount shall be \$10,000.00.

29 (25) May denotes the permissive.

30 (26) Minority Business Enterprise means a business
31 concern owned, managed and controlled by a minority person as
32 defined in the County's Minority/Women Business Enterprise
33 Ordinance.

34 (27) Person means any business, individual, union,
35 committee, club, or organization, or group of individuals.

36 (28) Professional Services means any narrow
37 discipline wherein a known practitioner has through education

1 and experience developed expert advisory and programming
2 skills as a vocation; any service performed primarily by
3 vocational personnel which requires the analysis or
4 certification of a professional before the services are
5 acceptable to the user of the service; or any other advisory,
6 study, or programming activity where the Director of
7 Purchasing determines that the level of skills and/or
8 creativity of the potential or known practitioner(s) warrant
9 procurement in lieu of competitive bid or quotation process.

10 (29) Proposal means an executed formal document
11 submitted by an offer to the buyer stating the goods and/or
12 service offered to satisfy the need as requested in the
13 Request for Proposal or Request for Information.

14 (30) Purchase/Procurement means buying, purchasing,
15 renting, leasing or otherwise acquiring any goods and/or
16 services for public purposes in accordance with the law,
17 rules, regulations and procedures intended to provide for the
18 economic expenditure of public funds. It includes but is not
19 limited to all functions which pertain to the obtaining of any
20 supplies, materials, equipment and/or services including
21 construction projects and capital improvements as defined
22 herein required by any department or agency of County
23 government regardless of the source of funds or for which
24 payment is made from County funds. For the purposes of this
25 Ordinance, it excludes those items set forth in Section II G.

26 (31) Purchase Order means a purchaser's document
27 used to authorize a purchase transaction with a vendor. It
28 should contain provisions for services ordered; applicable
29 terms as to payment, discounts, date of performance and
30 transportation and other factors or conditions relating to the
31 transaction. Acceptance of a purchase order shall constitute
32 a contract.

33 (32) Quotation means any oral or written informal
34 offer by a vendor to the buyer to furnish specific goods
35 and/or services at a stated price.

36 (33) Request for Information (RFI) means a
37 solicitation of responses which will satisfy a need rather

1 than a firm specification and in which the respondent is given
2 latitude in order to develop a product and/or service which
3 will fulfill the need.

4 (34) Request for Proposal (RFP) means a solicitation
5 of responses for a good and/or service for which the scopes of
6 work, specifications or contractual terms and conditions
7 cannot reasonably be closely defined. Evaluation of a
8 proposal is based on prior established criteria which may
9 include but may or may not be totally limited to price.

10 (35) Request for Quotation means an informal request
11 either oral or written to solicit prices for specific goods
12 and/or services.

13 (36) Responsible Bidder Offerer, Quoter, or
14 Respondent means an individual or business which has submitted
15 a bid, offer, proposal, quotation or response, which has the
16 capability in all respects to perform fully the contract
17 requirements, and the integrity and reliability which give
18 reasonable assurance of good faith and performance.

19 (37) Responsive Bidder, Offerer, Quoter, or
20 Respondent means an individual or business which has submitted
21 a bid, offer, proposal, quotation, or response, which conforms
22 in all material respects to the solicitation.

23 (38) Rules and Regulations of Purchasing means those
24 appropriately promulgated directives having general or
25 particular applicability designed to implement or interpret,
26 policy, or describing organization, procedure, or practice
27 requirements.

28 (39) Services means the furnishing primarily of
29 labor, time, and/or effort by a contractor, wherein the
30 provisions of goods or other specific end products other than
31 reports, studies, plans, advisories, contractual documents, or
32 other documents relating to the required performance is
33 incidental or secondary. This term shall not include
34 construction, employment agreements, or collective bargaining
35 agreements.

36 (40) Shall denotes the imperative.

1 (41) Sole Source means the only existing source of
2 the only item which meets the needs of the using department as
3 determined by a reasonably thorough analysis of the
4 marketplace.

5 (42) Specification means the words used in a Request
6 for Bid or Quotation to describe the goods and/or service to
7 be purchased or otherwise acquired.

8 (43) Using Department means that department within
9 County government which requests and utilizes goods and/or
10 services procured under this Ordinance.

11 (44) Vendor means an actual or potential supplier of
12 a good and/or service.

13 (45) Vendor List means the compilation by category
14 of goods and/or services of the names and addresses of those
15 appropriate suppliers of goods and/or services who have
16 indicated an interest in doing business with the County.

17 III. ORGANIZATION

18 A. PURCHASING DEPARTMENT

19 The Purchasing Department shall be the agency through
20 which the County will conduct its purchases of all supplies,
21 material, equipment, contractual services and/or combination
22 of goods and services and will manage any inventory necessary
23 to stock the County warehouse.

24 B. DIRECTOR OF PURCHASING

25 Subject to the provisions of this Ordinance and under
26 the direction of the Administrator, the Director of Purchasing
27 shall serve as the principal officer for the purchase and sale
28 of goods and services for County government.

29 C. DUTIES OF DIRECTOR OF PURCHASING

30 The Director of Purchasing shall:

31 (1) administer the central purchasing system
32 for the County;

33 (2) upon request of any constitutional officer
34 of the County, make available to such officer the services
35 provided for herein subject to the terms of this Ordinance and
36 any rules and regulations of Purchasing;

1 (3) maintain a warehouse stock of commonly
2 used items and a catalog system for the use of County
3 departments and agencies;

4 (4) maintain a current file of qualified
5 sources of supply for all goods and services purchased by the
6 County;

7 (a) Said Vendor File shall be maintained
8 so as to ensure that every qualified business which has
9 requested placement in the file is included and that the
10 widest practicable vendor coverage is provided.

11 (b) A vendor's name may be removed from
12 the Vendor File for failing to respond to three (3)
13 consecutive invitations to bid. After such removal, vendor
14 may be considered for reinstatement upon written request of
15 vendor.

16 (5) provide for the establishment/promulgation
17 of Rules and Regulations for Purchasing in the County's
18 policies and procedures manual which shall be reviewed and
19 amended from time to time;

20 (6) take all necessary action to further the
21 objectives of the County with regard to the promotion and
22 encouragement of Minority and Women Businesses' participation
23 in the procurement process;

24 (7) perform other duties as directed by the
25 Board, the Administrator and other competent superior
26 authority in the Administrative Branch of County government.

27 D. AUTHORITY OF THE DIRECTOR OF PURCHASING Subject to
28 the direction of the Board, Administrator, or other competent
29 superior authority in the Administrative Branch, all rights,
30 powers, duties, and authority relating to the procurement of
31 goods and/or services for the Board of County Commissioners,
32 including the authority to sign those agreements and contracts
33 for the purchase of goods and services governed by the
34 Ordinance provided they are in conformance with the law and
35 all applicable rules and regulations, are vested in the
36 Director of Purchasing.

1 E. DELEGATION OF AUTHORITY BY THE DIRECTOR OF PURCHASING
2 TO SUBORDINATE STAFF Subject to the additional direction of
3 the Board, the Administrator, or other competent superior
4 authority in the Administrative Branch, the Director of
5 Purchasing may delegate rights, powers, and authority vested
6 in him to subordinate purchasing employees when deemed
7 necessary by the Director of Purchasing.

8 F. AUTHORITY OF THE DEPARTMENTS OF ENGINEERING AND WATER
9 UTILITIES FOR CERTAIN PURCHASES Subject to the provisions of
10 this Ordinance and under the direction of the Board and
11 Administrator, the County Engineer and the Director of the
12 Department of Water Utilities shall serve as the principal
13 officers for selection and award of construction contracts
14 including design-build contracts and for all architectural,
15 professional engineering, landscaping architectural or
16 registered land surveying services for their departments
17 respectively and shall be vested with those rights, powers,
18 duties, authority and obligations otherwise granted to the
19 Director of Purchasing granted herein which are necessary for
20 those purchases for their departments.

21 IV. SOURCE SELECTION

22 The procurement of all goods, material, equipment,
23 services and combinations of goods and/or services by or on
24 behalf of the Board of County Commissioners, including those
25 transactions through which the Board of County Commissioners
26 shall receive revenue, in an amount equal to or in excess of
27 the mandatory bid amount shall be awarded by a competitive bid
28 or proposal process or as specifically provided in Section IV
29 (C) herein except as otherwise provided by state or federal
30 law.

31 Nothing in the foregoing shall prohibit the Board from
32 renewing purchase orders or contracts with vendors/contractors
33 originally selected through a competitive selection process or
34 from purchasing goods, material or equipment for inclusion in
35 a capital improvement project whose cost has been incorporated
36 as part of a bid selected in a competitive bidding process
37 provided for herein. Notwithstanding the provisions of

1 (2) No bidder shall be permitted to
2 correct a bid mistake after bid opening that would cause such
3 bidder to have the low bid, except that any bidder may correct
4 errors in extension of unit prices stated in the bids, or in
5 multiplication, division, addition, or subtraction. In such
6 cases, unit prices bid shall not be changed.

7 (3) Nothing herein is intended to
8 prohibit the acceptance of a voluntary reduction in price from
9 a low bidder after bid opening, provided such reduction is not
10 conditioned on, or does not result in, the modification or
11 deletion of any specifications or conditions contained in the
12 Invitation for Bids.

13 (b) A bidder who is alleging a judgmental
14 mistake of fact shall not be permitted to withdraw his/her bid
15 after bid opening. If such bidder unilaterally withdraws
16 his/her bid without permission after bid opening, the Director
17 of Purchasing may suspend the vendor from receiving new orders
18 from the County for up to two years, dating from the date of
19 unilateral withdrawal.

20 (c) A bidder alleging a nonjudgmental mistake
21 of fact may be permitted to withdraw his/her bid only when it
22 is determined by the Director of Purchasing that there is
23 reasonable proof that such a mistake was made and, if the bid
24 is the low bid, that the intended bid cannot be determined
25 with reasonable certainty. If a bidder unilaterally withdraws
26 his/her bid without permission after bid opening, the Director
27 of Purchasing may suspend the vendor from receiving new orders
28 from the County for up to two years, dating from the date of
29 the unilateral withdrawal.

30 (d) Information in a bid, which concerns the
31 responsibility of the bidder, shall not necessarily be
32 considered conclusive at the time of bid opening, except when
33 the Invitation for Bids unequivocally states that the bid
34 shall not be considered responsive unless the particular
35 information is provided in the bid. When such information has
36 not been so declared as a determinant of responsiveness of the
37 bid:

1 (1) The Director of Purchasing may
2 determine that the information submitted concerning the
3 responsibility of the bidder is so administratively inadequate
4 as to warrant a recommendation of rejection of the bid based
5 on a lack of demonstrated bidder responsibility.

6 (2) The Director of Purchasing may,
7 after bid opening, request additional information of the
8 bidder concerning his responsibility to perform; and the
9 bidder may voluntarily, after bid opening, provide additional
10 or corrective information concerning his responsibility as a
11 bidder. The Director of Purchasing shall consider this and
12 all other information gained prior to the time of award or
13 rejection in making his determinations and recommendations
14 concerning bid acceptance and award.

15 (e) A bid shall be considered responsive only
16 if it conforms to the requirements of the Invitation for Bids
17 concerning pricing, surety, insurance, specifications of the
18 goods or services requested, and any other matter
19 unequivocally stated in the Invitation for Bids as a
20 determinant of responsiveness; provided, however, that the
21 alternative methods may be considered and awarded unless
22 specifically prohibited. A lack of conformity on these
23 matters which is nonsubstantive in nature may be considered a
24 technicality or irregularity which may be waived by the
25 Director of Purchasing.

26 (7) Bid Evaluation

27 (a) The County reserves the right to accept or
28 reject any and all bids and to make award to the lowest
29 responsive and responsible bidder whose bid meets the
30 requirements and criteria set forth in the Invitation for Bid
31 and whose award will, in the opinion of the County, be in the
32 best interest of and most advantageous to the County.

33 (b) Factors to be considered in determining
34 whether the standard of responsibility has been met include
35 whether a prospective contractor/vendor has:

36 (1) available the appropriate financial,
37 material, equipment, facility, and personnel resources and

1 expertise, or the ability to obtain them, necessary to
2 indicate its capability to meet all contractual requirements;

3 (2) a satisfactory record of performance;

4 (3) a satisfactory record of integrity;

5 (4) qualified legally to contract with
6 the County; and

7 (5) supplied all necessary information in
8 connection with the inquiry concerning responsibility
9 including but not limited to any licenses, permits, or
10 organization papers required.

11 The prospective contractor/vendor shall supply
12 information requested by the County concerning the
13 responsibility of such contractor/vendor. If such
14 contractor/vendor fails to supply the requested information,
15 the County shall base the determination of responsibility upon
16 any available information or may find the prospective
17 contractor/vendor nonresponsible if such failure is
18 unreasonable.

19 (c) The County may conduct a prequalification
20 process in which the responsibility of potential
21 vendors/contractors is evaluated and may then limit acceptance
22 of bids or responses to those vendors/contractors deemed
23 qualified in such process.

24 (8) Bid Award - Award shall be made to the lowest
25 responsible, responsive bidder and shall be effective upon
26 issuance of a purchase order or notice of award by the
27 Director of Purchasing except those awards in excess of One
28 Hundred Thousand Dollars (\$100,000) which shall be effective
29 upon Board approval. The County may reject any bid prior to
30 such issuance. In the event only one bid is received, the
31 County may award to the sole bidder or rebid.

32 All bid awards in excess of One Hundred Thousand
33 Dollars (\$100,000) must be approved by the Board of County
34 Commissioners. All contracts must be approved and executed
35 by the Board of County Commissioners except those contracts in
36 the amount of Fifty Thousand Dollars (\$50,000) or less which
37 the Board by resolution has authorized the Director of

Purchasing to execute upon review and approval by the Office of the County Attorney and the Office of Financial Management and Budget.

(9) Amendments/Changes After Award - The Director of Purchasing may authorize the purchase of goods and/or services of up to One Hundred Thousand Dollars (\$100,000) and the purchase of goods and/or services of up to ten percent (10%) in excess of the award amount for purchases originally in excess of One Hundred Thousand Dollars (\$100,000) which have been approved by the Board, whichever is less. If procurement exceeds by ten percent (10%) the award amount, their payment must be approved by the Board or the item must be rebid.

The Director of Purchasing shall provide, on a minimum of a quarterly basis, reports to the Board on such purchases.

B. COMPETITIVE PROPOSAL PROCESS

When it is determined by the using department and the Director of Purchasing that the use of competitive sealed bidding is impractical due to the technical or specialized nature of the goods and/or services sought, the County may utilize the following competitive proposal processes as an alternative to the Competitive Bid Process:

(1) Requests for Proposals or Requests for Information setting forth the terms and conditions of the goods and/or services sought including evaluation factors shall be issued.

(a) Notice - Adequate notice shall be published in a newspaper of general circulation for a reasonable time prior to the time set for the submission of responses and shall be mailed to all parties on the applicable qualified vendor list.

(b) Submission - Proposals must be received no later than the original or amended time, date and at the location specified for submission in the Request for Proposal or Request for Information. No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall be returned unopened.

1 (c) Proposal Cancellation or Postponement - The
2 Director of Purchasing may, prior to a proposal opening, elect
3 to cancel or postpone the date and/or time for proposal
4 opening or submission.

5 (2) Proposal Evaluation - Award shall be made to the
6 most responsible, responsive offerer whose proposal is
7 determined to be the most advantageous to the County.
8 Evaluation of offerers and/or proposals may be made in a
9 multi-step selection process as set forth in the Rules and
10 Regulations of Purchasing or in the Request for Proposal or
11 Request for Information and shall be based upon factors of
12 responsibility set forth in Section IV (A) (7) (b) and upon
13 factors of responsiveness and quality based upon criteria set
14 forth in the Request for Proposals or Request for Information
15 and any other relevant information obtained through the
16 evaluation process. Such criteria may include but may or may
17 not be limited to price.

18 (3) Award - Notice of the intent to award shall be
19 posted at the location set for proposal submission. The award
20 shall be made in accordance with the provisions of Section IV
21 A (8).

22 C. ALTERNATIVE SOURCE SELECTION

23 (1) Small Purchases - Any purchase for an amount less
24 than the mandatory bid amount may be made in accordance with
25 those procedures promulgated in the Rules and Regulations of
26 Purchasing; provided, however, no purchase shall be
27 artificially divided so as to constitute a small purchase
28 under this section.

29 (2) Sole Source Purchases - The Director of
30 Purchasing may make or authorize the purchase, under the Rules
31 and Regulations of Purchasing, of goods and/or services
32 without competitive bid when the director of the using
33 department has documented in writing that such good and/or
34 service is the only item that meets the need and is available
35 through only one source.

1 (3) Emergency Purchases - The Director of Purchasing
2 may make or authorize emergency purchases as defined herein in
3 accordance with the Rules and Regulations for Purchasing.

4 (4) Cooperative Purchases - Notwithstanding any
5 requirements of this Ordinance, the Director of Purchasing may
6 purchase goods and/or services under contract with the
7 federal, state or municipal governments or any other
8 governmental agency or political subdivision providing the
9 vendor extends the same terms and conditions of the contract
10 to the County. Such purchase shall be approved by the Board
11 of County Commissioners if the amount of such purchase is
12 equal to or greater than the mandatory award amount.

13 (5) Professional and Consultant Services

14 (a) Estimated Value Equal to or in Excess of
15 Mandatory Bid Amount

16 The procurement of the services of professionals
17 or consultants as defined herein when the estimated fee is
18 equal to or in excess of the mandatory bid amount shall be
19 awarded by competitive selection as provided for in the Rules
20 and Regulations of Purchasing after issuance of Requests for
21 Proposals or Requests for Information which shall include the
22 required qualifications of the professional or consultant and
23 the scope of work. Evaluation and award shall be made in
24 accordance with Section IV (B) (2) and (3).

25 (b) Estimated Value Less Than the Mandatory Bid
26 Amount

27 The procurement of the services of professionals
28 or consultants as defined herein when the estimated fee is
29 less than the mandatory bid amount shall be awarded in
30 accordance with procedures promulgated for small purchases set
31 forth in Section IV (C) (1).

32 The Board of County Commissioners may waive the
33 requirements for competitive selection and approve
34 professional or consulting services upon recommendation of the
35 Administrator.

1 (6) Professional Architectural, Engineering,
2 Landscape Architectural or Landsurveying Services Not
3 Governed by Section 287.055, F.S.

4 (a) Services for projects the basic construction
5 cost for which is estimated to be equal or to exceed the
6 mandatory bid amount but which is not in excess of the
7 threshold amount set in Section 287.055, F.S. shall be awarded
8 by the competitive bid or proposal process set forth in
9 subsections A and B of this Section.

10 (b) Services for construction projects or for
11 planning or study activities the basic cost of which is
12 estimated to be less than the mandatory bid amount shall be
13 awarded in accordance with procedures promulgated for small
14 purchases set forth in Section IV (C) (1).

15 (c) Estimated Value Less than Mandatory Bid
16 Amount

17 The procurement of the services of professionals
18 or consultants as defined in Section II (H) (28) when the
19 estimated value is less than the mandatory bid amount shall be
20 made in accordance with the Rules and Regulations of
21 Purchasing.

22 (7) Design-Build Services

23 The procurement of Design-Build Services shall be made
24 in accordance with the following rules and procedures:

25 (a) Design Criteria Package

26 The design criteria package as defined herein
27 shall be prepared and sealed by a design criteria professional
28 employed or retained by the County. If the County enters into
29 a professional services contract for the preparation of the
30 design criteria package, the professional shall be selected
31 and contracted with in accordance with the requirements of
32 Section 287.055 (4) and (5), F.S. (1989). The professional
33 preparing the design criteria package shall not be eligible to
34 render services under a design-build contract executed
35 pursuant to the package prepared by such professional.

1 (b) Design-Build Evaluation Committee

2 A design-build evaluation committee, hereinafter
3 Committee, is hereby established which shall be composed of:

- 4 (1) a representative of the user agency,
5 (2) the County Engineer,
6 (3) the Director of the Architectural
7 Division,
8 (4) the Director of the Department of
9 Facilities, Planning and Design,
10 (5) the design-criteria professional.

11 (c) Selection

12 (1) Notice - The County shall publicly
13 advertise in a uniform and consistent manner on each occasion
14 when design-build services are required except in cases of
15 valid public emergencies. The advertisement shall include a
16 general description of the project and shall indicate how, and
17 the time within which, interested design-build firms may apply
18 for consideration.

19 (d) Qualification

20 Any firm or individual desiring to provide
21 design-build services for the County must first be determined
22 legally qualified.

23 Legal qualifications are:

24 (1) Firms must be properly certified to engage in
25 contracting through a certified or registered general
26 contractor or a certified or registered building contractor as
27 the qualifying agent; and

28 (2) Firms must be properly certified to practice
29 or to offer to practice engineering, architecture, or
30 landscape architecture.

31 (3) The firm shall be duly qualified to perform
32 its proposed service under any other applicable law.

33 The Committee shall prepare and maintain a list of
34 design-build firms qualified by training and experience. The
35 County may establish a procedure whereby annual statements of
36 qualifications and performance data shall be submitted by
37 design-build firms to the County. Each design-build firm

1 included on such list shall receive an announcement of
2 individual projects.

3 (e) Solicitation

4 Requests for Proposals (RFPs) shall be sent to all
5 interested firms requesting that their qualifications,
6 proposed design and price be submitted at a time and place
7 certain. The RFP shall contain at a minimum the design
8 criteria package; evaluation criteria based on price,
9 technical and design aspects of the project and the
10 proportionate weighing of such criteria; evaluation procedures
11 and any other information pertinent to selection and award of
12 the design-build contract.

13 The Committee shall determine the evaluation
14 criteria and weighing of such criteria and evaluation process
15 of each project.

16 All proposed designs and price proposals shall be
17 submitted in a separate sealed envelope.

18 (f) Evaluation

19 The Committee shall review all proposals and
20 identify no less than three (3) firms deemed qualified to
21 perform the required services based on firm qualifications,
22 availability and past work of the firm.

23 After short-listing, the Committee shall open the
24 envelopes containing the proposed design and the prices. The
25 Committee shall then rank the short-listed firms based on the
26 evaluation criteria set forth on the RFP. The Committee may
27 require oral presentations of short-listed firms.

28 (g) Negotiation

29 After ranking, the Committee shall attempt to
30 negotiate a contract within the parameters of the design
31 criteria package. The Board shall approve and execute such
32 contracts.

33 (h) Emergency

34 In the case of a public emergency as declared by
35 the Board, the Committee shall be authorized to negotiate with
36 the best qualified firm available at the time.

1 (i) Additional Functions of Design Criteria

2 Professional

3 The design-criteria professional shall be
4 consulted in the evaluation process, the supervision or
5 approval of the County of the detailed working drawings of the
6 project and for the evaluation of the compliance of the
7 project construction with its design criteria package.

8 D. PROTESTED SOLICITATIONS AND AWARDS

9 (1) Right to Protest - Any actual or prospective
10 bidder who is aggrieved in connection with the solicitation or
11 pending award of a contract may protest to the Director of
12 Purchasing.

13 (2) Notice - The protest shall be submitted within
14 five (5) calendar days after posting of the tabulation of bids
15 or, in the case of Requests for Proposals or Information,
16 after posting of the award recommendation, at that location
17 where bids or responses are submitted. The protest must be in
18 writing and must identify the protester and the solicitation
19 and shall include a factual summary of the basis of the
20 protest. Such protest is considered filed when it is received
21 by the Department of Purchasing.

22 (3) Authority to Resolve - A committee comprised of
23 the Director of Purchasing, a representative of the County
24 Attorney and an Assistant County Administrator or in the case
25 of Engineering or Water Utility projects, the Deputy County
26 Administrator, shall have the authority to settle and resolve
27 the protest.

28 The Director of Purchasing shall serve as the Chair of
29 the Committee. The Director of the Office of Equal
30 Opportunity shall serve as an advisor to the Committee;
31 provided, however, where the protest involves a Minority or
32 Women Business issue or an allegation of discrimination, the
33 Director of the Office of Equal Opportunity shall serve as a
34 fourth member of the Committee.

35 (a) If it is determined that the
36 solicitation or award is in violation of law or the Rules and

1 Regulations of Purchasing, the solicitation or award shall be
2 cancelled or revised.

3 (b) If it is determined that the
4 solicitation or award should be upheld, the Director of
5 Purchasing shall promptly issue a decision in writing stating
6 the reason for the action with a copy furnished to the
7 protestor and any other intervening party. The decision shall
8 be final and conclusive as to the County unless a party
9 commences action in court.

10 (4) Stay of Procurement During Protests - In the
11 event of a timely protest, the Director of Purchasing shall
12 not proceed further with the solicitation or with the pending
13 award of the contract until the Director, with the advice of
14 the County Attorney and after consultation with the using
15 department, makes a determination that the award of the
16 contract without delay is necessary to protect substantial
17 interests of the County Government.

18 (5) Reservation of Powers to Settle Actions

19 Pending before the Courts - Nothing in this Section
20 is intended to affect the existing powers of the Board to
21 settle actions pending before the Courts.

22 E. SUSPENSION AND DEBARMENT

23 (1) Authority - The Director of Purchasing may
24 automatically suspend or debar for cause the right of a vendor
25 to be included on a vendor list and any bid or response from
26 that vendor rejected; provided however, the Board shall have
27 the power to waive or lift such suspension or debarment.

28 (2) Suspension - A vendor may be suspended for a
29 period not to exceed two (2) years as determined by the
30 Director based upon the following:

31 (a) Failure to fully comply with the
32 conditions, specifications, or terms of a bid, proposal or
33 contract with the County;

34 (b) Commission of any fraud or
35 misrepresentation in connection with a bid, quotation or
36 proposal.

1 (c) Charged by a court of competent
2 jurisdiction with the commission of a criminal offense as an
3 incident to obtaining or attempting to obtain a public or
4 private contract or subcontract, or in the performance of
5 such contract or subcontract.

6 (d) Charged by a court of competent
7 jurisdiction with the following: embezzlement, theft,
8 forgery, bribery, falsification or destruction of records,
9 receiving stolen property, or any other offense indicating a
10 lack of business integrity or business honesty which
11 currently, seriously, and directly affects responsibility as
12 a County Government contractor.

13 If charges are dismissed or the vendor found
14 not guilty, the suspension shall be lifted automatically upon
15 written notification and proof of final court disposition
16 provided by the vendor to County.

17 (e) Vendor becomes insolvent, has proceedings
18 in bankruptcy instituted against it or, compounds its debts or
19 assigns over its estate or effects for payment thereof, or has
20 a receiver or trustee appointed over its property.

21 (f) Commission or any act or omission to
22 perform any act which is grounds for debarment.

23 (g) Any other cause the Director of Purchasing
24 determines to be so serious and compelling as to materially
25 and adversely affect responsibility of a business as a County
26 Government contractor, including but not limited to suspension
27 by another governmental entity for substantial cause.

28 (h) Violation of the ethical standards set
29 forth in local and State or Federal law.

30 (3) Debarment - A vendor may be permanently debarred
31 for the following:

32 (a) Failure to fully comply with the
33 conditions, specifications, drawings, or terms of a bid,
34 proposal or contract with the County twice in any one year
35 period.

36 (b) Conviction by or judgment obtained in a
37 court of competent jurisdiction for commission of those

1 offenses in connection with the vendor's commercial enterprise
2 stated in subsections (2) c and (2) d. If the conviction or
3 judgment is reversed through the appellate process, the
4 debarment shall be removed immediately upon written
5 notification and proof of final court disposition from the
6 vendor to the County.

7 (4) Decision - After the Director of Purchasing has
8 determined he/she has cause to suspend or debar a vendor,
9 he/she shall notify the vendor in writing of the debarment or
10 the period of suspension and the reasons for the action taken.

11 (5) Finality of Decision - The suspension or
12 debarment shall be final and conclusive unless the suspended
13 or debarred vendor initiates protest proceedings pursuant to
14 Section IV (D) within 21 days after the date of notification.

15 F. INSPECTIONS AND TESTS

16 (1) The Director of Purchasing shall inspect, or
17 arrange for the inspection of, all deliveries of supplies,
18 materials, equipment or contractual services to determine
19 conformance with specifications set forth in the order of
20 contract.

21 (2) Any using department which has the staff and
22 facilities for adequate inspection may be authorized by the
23 Director of Purchasing to inspect deliveries made to it. The
24 Rules and Regulations of Purchasing shall provide for this
25 method of inspection.

26 (3) The Director of Purchasing shall have the
27 authority to require chemical and/or physical tests or samples
28 submitted with bids and samples of deliveries which are
29 necessary to determine their quality and conformance with the
30 specifications. For such tests, the Director of Purchasing
31 has the authority to make use of laboratory facilities of an
32 agency of the County government or any outside laboratory. In
33 the event, the product fails such testing, the County may
34 require the Vendor to pay the County for any expense incurred
35 in testing.

1 **V. EQUAL OPPORTUNITY/MINORITY BUSINESS ENTERPRISES**

2 The County shall use its best efforts to ensure that
3 minority businesses shall have an equitable opportunity to
4 participate in the County's procurement process and that no
5 business shall be excluded from participation in, denied
6 benefits of, or otherwise discriminated against in connection
7 with the award and performance of any contracts with the
8 County on the grounds of race, color, national origin, sex or
9 handicapped status.

10 This Ordinance shall be read consistently with the
11 County's Minority/Women Business Enterprise Ordinance.

12 **VI. CONFLICT OF INTEREST**

13 Neither the Director of Purchasing nor any member of
14 his/her staff, shall be financially interested or have any
15 personal beneficial interest, directly or indirectly, in any
16 purchase or contract of any supplies, materials, equipment, or
17 services used by or furnished for the County.

18 The Director of Purchasing and every member of his/her
19 staff are prohibited from accepting or receiving from any
20 person, firm or corporation to which any purchase or contract
21 may be awarded any money, rebate, gift or anything of value or
22 any promise, obligation or contract for future reward or
23 compensation.

24 **VII. REPEAL OF LAWS IN CONFLICT**

25 Palm Beach County Ordinances 85-28 and 86-38 are hereby
26 repealed.

27 All local ordinances applying to the unincorporated area
28 of Palm Beach County or parts of such Ordinances in conflict
29 with any provisions of this Ordinance are hereby repealed to
30 the extent of the conflict; provided, however, this Ordinance
31 shall not repeal the County's Minority/Women Business
32 Enterprise Ordinance.

33 **VIII. SEVERABILITY**

34 If any section, paragraph, sentence, clause, phrase, or
35 word of this Ordinance is for any reason held by the Court to
36 be unconstitutional, inoperative or void, such holding shall
37 not affect the remainder of this Ordinance.

1 IX. INCLUSION IN THE CODE OF LAWS

2 The provisions of this Ordinance shall become and be made
3 a part of the code of laws and codes of Palm Beach County,
4 Florida. The Sections of the Ordinance may be renumbered or
5 relettered to accomplish such, and the word "code" may be
6 changed to "section," "article," or any other appropriate
7 word.

8 X. EFFECTIVE DATE

9 The provisions of this Ordinance shall become effective
10 upon receipt of acknowledgement by the Secretary of State.

11 APPROVED AND ADOPTED by the Board of County Commissioners
12 of Palm Beach County, Florida, on the 24th day of
13 July, 19 90.

14 APPROVED AS TO FORM AND
15 LEGAL SUFFICIENCY

16 [Signature]
17 County Attorney
18

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
Chairman

19 Acknowledgement by the Department of State of the State
20 of Florida, on this, the 6th day of August,
21 19 90.

22 EFFECTIVE DATE: Acknowledgement from the Department of
23 State received on the 10th day of August,
24 19 90, at 8:09 A.M., and filed in the Office of the
25 Clerk of the Board of County Commissioners of Palm Beach
26 County, Florida.

JOHN B. DUNKLE, CLERK
Board of County Commissioners
By: [Signature]
DEPUTY CLERK

27 (In/Purch.Ord)

28 7/31/90

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 7/31/90
DATED at West Palm Beach, FL on 7/31/90
JOHN B. DUNKLE, Clerk
By: [Signature] D.C.